

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

TIMOTHY AARON BAXTER,)	
)	
Plaintiff,)	
)	
VS.)	No. 12-1294-JDT-egb
)	
STATE OF TENNESSEE, ET AL.,)	
)	
Defendants.)	

ORDER DIRECTING PLAINTIFF TO FILE UPDATED FINANCIAL
INFORMATION OR PAY THE FULL \$505 APPELLATE FILING FEE

Plaintiff Timothy Aaron Baxter, a prisoner acting *pro se*, filed a civil complaint pursuant to 42 U.S.C. § 1983. (ECF No. 1.) The Court granted leave to proceed *in forma pauperis* and assessed the civil filing fee pursuant to the Prison Litigation Reform Act (“PLRA”), 28 U.S.C. §§ 1915(a)-(b). (ECF No. 5.) On October 4, 2013, the Court issued an order granting leave to amend the complaint and directing that process be issued for Defendant Kevin Gray. (ECF No. 10.) Ultimately, the Court granted Defendant Gray’s motion for summary judgment and certified that an appeal by Plaintiff would not be taken in good faith. (ECF No. 61.) Judgment was entered on March 12, 2015. (ECF No. 62.)

Plaintiff filed a motion for relief from judgment pursuant to Federal Rule of Appellate Procedure 60(b) on March 18, 2015. (ECF No. 63.) The Court denied that motion on March 15, 2016. (ECF No. 69.) Plaintiff then filed a second motion for relief from judgment on

April 4, 2016 (ECF No. 70), which was denied on October 7, 2016 (ECF No. 74). On November 25, 2016, Plaintiff filed a notice of appeal. (ECF No. 75.)

Generally, a plaintiff granted leave to proceed *in forma pauperis* is not required to pay filing fees. 28 U.S.C. § 1915(a)(1). Because Plaintiff is a prisoner, however, he must pay the entire \$505 appellate filing fee, although he may be able to take advantage of the installment payment method of § 1915(b). *See McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997), *partially overruled on other grounds by LaFountain v. Harry*, 716 F.3d 944, 951 (6th Cir. 2013). In order to take advantage of the installment procedures, a prisoner plaintiff must submit, along with the notice of appeal, an updated *in forma pauperis* affidavit and inmate trust account statement. *Id.* at 610; 28 U.S.C. § 1915(a)(2).

In this case, Plaintiff did not pay the \$505 appellate filing fee or submit an updated *in forma pauperis* affidavit and trust account statement with the notice of appeal. Therefore, at the present time, he is not eligible to take advantage of the installment procedures of § 1915(b). Plaintiff is, however, liable to the Court for the full amount of the appellate filing fee, which accrued at the moment the notice of appeal was filed. Accordingly, Plaintiff is hereby ORDERED to submit either the entire \$505 appellate filing fee or an updated *in forma pauperis* affidavit and trust account statement within 30 days after the date of this order. If Plaintiff needs additional time to file the required documents, he may request one 30-day extension of time from this Court.

If Plaintiff fails to file the required documents in a timely manner, the Court will deny leave to appeal *in forma pauperis* and assess the entire \$505 filing fee from his inmate trust

account without regard to the installment procedures, and the Sixth Circuit may dismiss the appeal for failure to prosecute.

The Clerk is directed to send Plaintiff a copy of the prisoner *in forma pauperis* affidavit form along with this order. The Clerk is also directed to notify the Sixth Circuit of the entry of this order.

IT IS SO ORDERED.

s/ **James D. Todd**
JAMES D. TODD
UNITED STATES DISTRICT JUDGE